

CHAPTER 82 CIGARETTE TAX

[Prior to 12/17/86, Revenue Department[730]]

701—82.1(453A) Permits required. Every person selling or distributing cigarettes or using or consuming untaxed cigarettes within the state of Iowa must first obtain the appropriate permit.

82.1(1) Distributor's permit. Every person acting as a distributor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributor is any person who obtains unstamped cigarettes within or without this state by manufacture, production, import or by any means for the purpose of making the first intrastate sale or distribution or the first use or consumption in Iowa. Every distributor holding a distributor's permit will cause to be affixed, within or without Iowa, all cigarette tax stamps or meter impressions as set forth in rule 82.8(453A) and Iowa Code section 453A.10. The distributor permit expires annually on June 30, and costs \$100. A distributor must obtain a duplicate permit for each place of business owned or operated by the distributor from which distributor activities are carried on. Duplicate distributor permits may be obtained from the department at an annual cost of \$5 for each duplicate permit. A distributor may act as a wholesaler without obtaining a wholesaler's license, but a wholesaler's license may be obtained upon meeting all of the requirements for the issuance of a wholesaler's license. If a distributor performs any other function which requires a license, a separate license must be obtained. If a person is not performing the functions of a distributor, a permit will not be issued.

82.1(2) Wholesaler's permit. Every person acting as a wholesaler as defined in Iowa Code section 453A.1 must obtain a wholesaler's permit. A wholesaler is any person, other than a distributor or a distributing agent, who sells or distributes cigarettes within Iowa for resale. A "sale or distribution" of cigarettes connotes a transfer of cigarettes from one person or entity to another person or entity. *Union Oil Co. of California v. State*, 2 Wash. 2d 436, 98 P. 2d 660 (1940); *State v. Nash Johnson and Sons' Farms Inc.*, 263 N.C. 66, 138 S.E. 2d 773 (1964). Therefore, an intraentity transfer is not a transaction which qualifies as a function of a wholesaler. The wholesaler permit expires annually on June 30, and costs \$100 annually. A wholesaler must obtain a duplicate permit for each place of business owned or operated by the wholesaler from which wholesale activities are carried on. Duplicate wholesaler permits may be obtained from the department at an annual cost of \$5 for each duplicate permit. If a person is not performing the functions of a wholesaler, a permit will not be issued.

The following example will illustrate the application of this subrule:

The XYZ Grocery Chain has a warehouse in Des Moines where stamped cigarettes are stored. The stamped cigarettes are purchased from a licensed distributor. XYZ transfers the cigarettes to its retail outlets across the state for the purpose of making retail sales, and makes no other sales. The storage of stamped cigarettes and the retail sale of cigarettes are not functions of a wholesaler, and XYZ would not be eligible for a wholesaler's permit.

82.1(3) Cigarette vendor's permit. Every person acting as a cigarette vendor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A cigarette vendor is any person who takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines for the purpose of selling cigarettes at retail, and does so by reason of ownership, agreement or contract.

A retailer who holds a retail permit is not required to get a cigarette vendor's permit if the retail permittee is, in fact, the owner of the cigarette vending machine(s) which is operated in the location described in the retail permit. The cigarette vendor's permit expires annually on June 30, and costs \$100 annually. A cigarette vendor must have a duplicate permit for each place of business from which cigarette vending machines are furnished, installed or serviced. A duplicate permit can be obtained from the department for an annual cost of \$5. The duplicate permit applies to additional places of business from which the cigarette vendor conducts operations and not to those places of business where the cigarette vending machines are installed for retail sales.

EXAMPLE: A cigarette vendor owns three warehouses from which the vendor supplies cigarettes to 100 vending machines located at various retail establishments. The total permit cost for the vendor would be \$110 (\$100 for a regular permit plus \$10 for two duplicate permits at \$5 each).

82.1(4) *Railway retail permit.* A retail permit may be issued to a railway dining car company, railway sleeping car company, railroad or a railway company. A retailer's permit for railway cars is issued by the department for an annual cost of \$25 and expires on June 30 of each year. A duplicate permit is required for each car in which cigarettes are stored for sale or sold and each duplicate permit is issued by the department at an annual cost of \$2.

82.1(5) *Manufacturer's permit.* Any manufacturer, as defined in Iowa Code section 453A.1, may obtain a manufacturer's permit from the department. A manufacturer is any person who ships cigarettes into this state from outside the state. The permit is issued without cost and is valid until revoked or canceled. The permit allows the manufacturer to purchase tax stamps from the department and to affix such stamps to cigarettes outside of this state prior to their shipment into the state. A manufacturer is required to affix stamps to cigarettes prior to their shipment into this state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

82.1(6) *Distributing agent's permit.* Every person acting as a distributing agent as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributing agent is any person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received from the manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such storage place. The distributing agent's permit is issued by the department at an annual cost of \$100 and expires on June 30 of each year. A separate permit at the \$100 cost must be obtained for each place of business owned or operated within the state by the distributing agent. The permit authorizes the distributing agent to store unstamped cigarettes which are received in interstate commerce for distribution or delivery to distributors upon orders received from outside this state or to be sold outside this state. Stocks of cigarettes held for interstate and intrastate commerce must be kept separate.

82.1(7) *Retailer's permit.*

a. In general. Every person acting as a retailer, as defined in Iowa Code section 453A.1, must obtain a permit. A retailer is any person who:

- (1) Directly sells, distributes or offers for sale cigarettes for consumption, or
- (2) Possesses cigarettes for direct sale for consumption.

Retail permits are issued by the following authorities at the following prices:

1. Within unincorporated areas of a county, by the county board of supervisors at an annual cost of \$50.
2. Within the city limits of a city of less than 15,000 population, by the city council, at an annual cost of \$75.
3. Within the city limits of a city equal to or greater than 15,000 population, by the city council, at an annual cost of \$100.

The retail permit expires on June 30 of each year. A renewal sticker furnished by the department containing the appropriate year and number may be issued in lieu of a new permit where the place of business of the retail permit holder has remained the same. The retail permit is valid only for the location described in the permit, and a retailer must obtain a separate permit for each place of business owned or operated by the retailer. (See subrule 82.2(3))

The power to grant the retail permit is discretionary with the city council or board of supervisors, and uniform, nondiscriminatory limits may be placed on their issuance. *Bernstein v. City of Marshalltown*, 215 Iowa 1168, 248 N.W. 26 (1933); *Ford Hopkins Co. v. City of Iowa City*, 216 Iowa 1286, 248 N.W. 668 (1933); 1938 O.A.G. 708.

b. Mobile retailer. If a cigarette retailer sells cigarettes from a mobile concession vehicle, the vehicle itself shall be considered a place of business. A city has the discretionary power to grant a retail cigarette permit to a place of business located within the corporate limits of that city. A county has the discretionary power to grant a retail cigarette permit to a place of business located within the unincorporated areas of the county. If a retailer is selling cigarettes from a mobile concession vehicle within the area of several permit-issuing authorities, the retailer must obtain a permit from each authority. The retailer is operating a single place of business within the jurisdiction of the several authorities and is, therefore, subject to regulation by each.

The location described on the permit shall include identification of the vehicle and the address of the permanent place of business from which the vehicle is dispatched. If the vehicle is traded in for a new vehicle, the exchange provisions of subrule 82.2(3) shall apply.

This rule is intended to implement Iowa Code sections 453A.13, 453A.17, and 453A.23 and Iowa Code section 453A.16 as amended by 1999 Iowa Acts, chapter 151.

701—82.2(453A) Partial year permits—payment—refund—exchange. For purposes of this rule, “year” means the cigarette tax year running from July 1 of year A to June 30 of year B and “quarter” means a yearly quarter with the first quarter commencing on July 1.

82.2(1) Partial payment. If any permit is granted other than in the first quarter, the following partial payments are required:

1. During the second quarter - 75 percent of the permit fee.
2. During the third quarter - 50 percent of the permit fee.
3. During the fourth quarter - 25 percent of the permit fee.

82.2(2) Partial refund. If any unrevoked permit for which the entire annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

1. During the first quarter - 75 percent of the permit fee.
2. During the second quarter - 50 percent of the permit fee.
3. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 75 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded by the entity which issued the permit:

1. During the second quarter - 50 percent of the permit fee.
2. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 50 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

During the third quarter - 25 percent of the annual fee.

82.2(3) Exchange of permits. If a permittee changes the location of an operation requiring a permit but remains within the jurisdiction of the same entity which granted the original permit, the permittee may exchange the invalid permit (valid only for the location described in the permit) for a valid permit free of charge, without the partial payment-partial refund process. (1934 O.A.G. 106)

The following nonexclusive examples will illustrate the application of this rule:

EXAMPLE 1: City Bar and Grill sells cigarettes at retail and has obtained a retail cigarette permit from the city of Des Moines. The establishment is moved across the street but remains within the city limits of Des Moines. The retail permit is valid only for the location described in the permit, and therefore, the original permit is no longer valid. However, since the establishment has remained within the jurisdiction of the entity which granted the original permit, Des Moines, the original, presently invalid permit may be exchanged for a valid permit with a new location description at no cost.

EXAMPLE 2: Same as Example 1, except the new location of City Bar and Grill is outside the corporate limits of Des Moines and within the unincorporated area of Polk County. City Bar and Grill would have to surrender the old permit to the city of Des Moines and obtain a new permit from Polk County with the schedules set forth in this rule applying.

This rule is intended to implement Iowa Code section 453A.13, subsections 3 and 4.

701—82.3(453A) Bond requirements. The amount of the bond required for each permit shall be as follows:

1. Distributor permit - \$2,500
2. Wholesaler permit - \$2,500
3. Vendor permit - \$1,000
4. Railway car retail permit - \$500
5. Manufacturer permit - \$5,000
6. Distributing agent permit - \$2,500
7. Retail permit - \$-0-
8. Nonpermittee storing interstate cigarettes - \$5,000

If a person is required to obtain more than one type of permit, the bond requirements shall be cumulative and additional bonds or a single bond equal to the total aggregate requirements must be obtained. (See rule 701—81.7(453A) for the required form of the bond.)

This rule is intended to implement Iowa Code sections 453A.14, 453A.17 and 453A.23.

701—82.4(453A) Cigarette tax—attachment—exemption—exclusivity of tax.

82.4(1) Tax. See Iowa Code section 453A.6 for the rate of tax imposed on cigarettes.

82.4(2) Attachment. The tax is imposed when the cigarettes are received by any person in Iowa for the purpose of making a “first sale” of the cigarettes (as defined in Iowa Code section 453A.1). If the tax is not paid by the person making the first sale, it must be paid by any person into whose possession such cigarettes come until the tax has been paid, the tax to be paid only once. The fact that the tax is eventually paid will not relieve the person’s standing prior in the chain of distribution of the sanctions for distributing untaxed cigarettes if the tax should have been paid sooner by said person.

The tax must be added to the selling price of every package of cigarettes so that the ultimate consumer bears the burden of the tax.

82.4(3) Exemption. If all of the following conditions are met, the Iowa cigarette tax need not be paid:

- a. The cigarettes are imported on or about the person claiming the exemption,
- b. The total quantity of cigarettes so imported is equal to or less than 40,
- c. The seal of the individual cigarette package has been broken, and
- d. The cigarettes are actually used by the person so importing and are not sold or offered for sale.

82.4(4) Exclusivity of tax. No other occupation or excise tax may be imposed by any political subdivision of the state. However, this provision does not apply to occupation or excise taxes imposed by the state.

82.4(5) Sales exempt from tax. Sales of cigarettes which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax. If the sale is exempt from the tax, stamps must not be attached. No refund will be issued for stamps which are attached to cigarette packages which are later sold exempt.

a. *Sales to the federal government.* Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A nor pay the tax imposed thereunder. However, individuals who have purchased or obtained cigarettes from a federal instrumentality and come within the jurisdiction of the state, are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37. *U.S. v. Tax Commission of Mississippi*, 421 U.S. 599, 44 L.Ed. 2d 404, 95 S.Ct. 1872 (1975).

b. *Sales by or to Indians.* Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribe members are exempt from the tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). The Indians are subject to the permit requirements of Iowa Code chapter 453A. Indians who have purchased or obtained cigarettes from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37.

This rule is intended to implement Iowa Code section 453A.6 as amended by 1999 Iowa Acts, chapter 151.

701—82.5(453A) Cigarette tax stamps.

82.5(1) *In general.* To evidence the payment of the cigarette tax, cigarette stamps must be securely affixed to the individual cigarette containers. The stamps shall be provided by the director, and either sold directly to a distributor or a manufacturer holding a valid distributor's or manufacturer's permit or through authorized banks, as defined in Iowa Code section 524.103 to these same permittees. The possession of unstamped cigarettes by persons not authorized to possess unstamped cigarettes shall be prima facie evidence of the nonpayment of the tax. The penalty for possession of unstamped cigarettes is set forth in Iowa Code section 453A.31(1) as amended by 1999 Iowa Acts, chapter 151, section 81. Any person in possession of unstamped cigarettes must pay the tax directly to the department. If sales of cigarettes exceed the purchase of cigarette stamps by persons authorized and responsible to affix stamps, there is established a rebuttable presumption that the excess cigarettes were sold without the tax stamps affixed thereto.

82.5(2) *Purchase of stamps from the department.* Stamps may be purchased from the department and from authorized banks in unbroken rolls of 30,000 stamps, or other quantities authorized by the director. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to "Treasurer of State of Iowa" in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by certified mail at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

82.5(3) *Purchase of stamps from authorized bank.* The purchase of stamps from an authorized bank must be made by the distributor or manufacturer or the distributor's or manufacturer's representative. The permittee shall furnish the bank with a requisition form prescribed by the department along with payment for the full price of the stamps less any discount as provided in rule 701—82.7(453A). The director may require such payments to be by cashier's check or certified check as to any individual distributor or manufacturer. The authorized bank shall be notified in writing by the department of any such requirement. Distributors or manufacturers who elect to purchase stamps from authorized banks shall advise the department in writing of the authorized bank so elected. The distributor or manufacturer may not purchase from any other bank other than the one so selected, but may still purchase stamps directly from the department. See rule 701—82.6(453A) for restrictions on authorized banks as to the sale of stamps. Also see rule 82.11(453A) relating to refunds.

This rule is intended to implement Iowa Code sections 453A.6, 453A.8, and 453A.28 as amended by 1999 Iowa Acts, chapter 151, and Iowa Code sections 453A.7, 453A.10, 453A.12, and 453A.35.

701—82.6(453A) Banks authorized to sell stamps—requirements—restrictions.

82.6(1) *Authorization.* The director has the discretion to allow the sale or distribution of stamps through authorized banks as defined in Iowa Code section 524.103. The authorization of a bank to sell stamps is not a mandatory direction, but may be utilized by the director to enhance the efficiency of the tax stamp distribution system. Some of the factors the director will consider in determining whether or not to authorize a bank to sell stamps are:

- a. Geographical location in relation to distributors or manufacturers requesting alternative purchase locations,
- b. The anticipated volume of stamps to be purchased by the requesting distributors or manufacturers,
- c. Access to transportation systems, and
- d. Prior experience with the bank.

82.6(2) *Sale of stamps.* An authorized bank may sell cigarette stamps only to distributors or manufacturers holding valid permits who have “elected” (as per subrule 82.5(3)) to purchase stamps from that bank. The department shall furnish each bank with a list of all such distributors or manufacturers who have so elected, and the bank shall not sell stamps to persons not on the list. The bank must receive payment in full, less the discount, before selling stamps. See rule 82.7(453A). A bank is not authorized to accept credit memorandums from distributors or manufacturers.

82.6(3) *Stamp inventory.* Each bank shall keep an adequate inventory of stamps on hand to supply distributors or manufacturers assigned to said bank for at least six weeks. Stamps will be shipped freight prepaid to the bank from the department or from the supplier of the stamps. The supplier of the stamps shall advise the department at once by mail of a shipment to a bank and the bank shall advise the department at once by mail of the receipt of the stamps. Each bank shall store stamps in a secure vault.

82.6(4) *Reports and remittances.* Each bank authorized to sell stamps shall forward to the department the invoices, requisitions, and remittances for stamps sold on a daily basis. Each bank shall forward to the department, on the first working day of each month, an inventory report which shall minimally include as to the prior month: the quantity of stamps on hand at the beginning of the month, the quantity of stamps received during the month, the quantity of stamps sold as to each distributor or manufacturer, the quantity of stamps on hand at the end of the month and the signature of the person responsible for the stamps.

82.6(5) *Audit.* For the purpose of auditing for the end of the fiscal year, no bank shall sell cigarette stamps on the days from June 25 to June 30. With or without notice, the department or a representative designated by the department may take an inventory of stamps and audit stamp sales.

Each bank must retain all records of inventory, stamp receipts, and stamp sales for a period of two years.

82.6(6) *Termination of authorization.* The director may terminate the authorization of a bank to sell stamps if the bank has failed to comply with the provisions of this rule or Iowa Code chapter 453A, or if the director deems it desirable for the efficient distribution of stamps. Notice of termination shall be sent to the bank by certified mail. The bank may appeal the termination determination by filing a protest pursuant to 701—Chapter 7 within 30 days of notice of termination. A bank may voluntarily terminate the sale of stamps by giving the department 90 days’ written notice. Upon termination, the bank must immediately return all stamps and present a final accounting, along with any remittances, to the department.

This rule is intended to implement Iowa Code sections 453A.8, 453A.12, and 453A.25.

701—82.7(453A) *Purchase of cigarette tax stamps—discount.* Upon the purchase of cigarette tax stamps, the distributor or manufacturer shall be entitled to a discount of 2 percent from the face value of the stamps.

This rule is intended to implement Iowa Code section 453A.8.

701—82.8(453A) *Affixing stamps.* Every package of cigarettes received in this state by a licensed distributor or for distribution within or without the state of Iowa must be stamped within 48 hours of their receipt, unless the distributor is also licensed as and is acting as a distributing agent. The cigarettes held by a person acting as a distributor and those held by the same person who is also acting as a distributing agent must be kept separate, and if not, the entire inventory will be subject to the 48-hour limitation. The 48-hour period shall be exclusive of Sundays and legal holidays. (See 1958 O.A.G. 25.)

This rule is intended to implement Iowa Code sections 453A.10 and 453A.17.

701—82.9(453A) Reports. Every person licensed as a cigarette distributor or manufacturer, or any other person as deemed necessary by the director, must file a monthly report on or before the tenth day of the month following the month for which the report is made. The report must be complete and certified by the person responsible for filling out the report. The failure to file a report or the filing of a false or incomplete report shall subject the person to a penalty as set forth in Iowa Code section 453A.31 as amended by 1999 Iowa Acts, chapter 151, section 81. (See rule 701—10.76(453A).) The report must be so certified or the report shall be considered incomplete. Whenever “cigarette” is used in this rule, it shall also include taxable “little cigars.”

82.9(1) *In-state distributors not exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped and who is not engaged in exporting cigarettes from this state shall file Forms 70-017 (Monthly Cigarette Tax Report) and 70-020 (Self Audit Report). The two forms are considered a multipart report and both forms must be completed before the report will be considered “filed.”

- a. The Monthly Cigarette Tax Report shall include, but not be limited to:
 - 1. The distributor’s name, permit number and address;
 - 2. The amount of Iowa revenue purchased during the month;
 - 3. The quantity of cigarettes on hand at the end of the month;
 - 4. The amount of revenue on hand at the end of the month;
 - 5. Purchases of cigarettes during the month and as to each purchase, the seller’s name, the date of purchase, the invoice number, and the quantity purchased;
 - 6. An inventory report as to out-of-state revenue;
 - 7. The quantity of cigarettes returned to the factory along with supporting documents; and
 - 8. The certification of the person responsible for making the report.
- b. The Self Audit Report shall include, but not be limited to:
 - 1. The distributor’s name, permit number and address;
 - 2. An inventory accounting for cigarettes; and
 - 3. An inventory accounting for revenue.

The quantity of cigarettes distributed or stamped should be equal to the tax equivalent of the revenue used. Any discrepancy must be adequately explained.

82.9(2) *In-state distributors exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped who also engages in exporting cigarettes from this state shall file Form 70-017 (Monthly Cigarette Tax Report). This form must be completed before the report will be considered “filed.”

82.9(3) *Out-of-state distributors.* Every distributor stamping cigarettes only without the state shall file Form 70-018 (Monthly Cigarette Tax Report). The Monthly Cigarette Tax Report (Form 70-018) shall include, but not be limited to:

- 1. The distributor’s name, address and permit number;
- 2. An itemized statement of Iowa revenue purchased;
- 3. An inventory accounting of Iowa revenue;
- 4. A detailed schedule of cigarette distribution in Iowa and as to each distribution, the date, the name of purchaser or receiver, the purchaser’s address and the quantity of cigarettes distributed; and
- 5. The certification of the person responsible for making the report.

82.9(4) *Manufacturers and other persons.* The monthly reports for manufacturers and other persons shall contain such information as the director deems necessary.

This rule is intended to implement Iowa Code section 453A.15 as amended by 1999 Iowa Acts, chapter 151.

701—82.10(453A) Manufacturer's samples.

82.10(1) Iowa Code section 453A.39 provides a method for manufacturers to distribute free sample packages of cigarettes or little cigars. This method is to be followed to the exclusion of all others. (See 1982 O.A.G. #710.)

The cigarettes or little cigars must:

- a. Rescinded IAB 1/22/92, effective 2/26/92.
- b. Be sent to a licensed distributor.
- c. Rescinded IAB 1/22/92, effective 2/26/92.
- d. Have tax paid thereon by a distributor.
- e. Be clearly marked "sample."
- f. Contain acknowledgment of tax being paid on each carton containing free samples.

The manufacturer must notify the department by affidavit of shipment and the distributor must notify the department by affidavit of receipt and separately remit the tax. The tax must be computed on a per cigarette basis rather than a per package basis.

82.10(2) Remittance of tax and acknowledgment of payment. Iowa Code section 453A.39 provides that the tax will be paid by a licensed distributor. The payment of tax should accompany the distributor's affidavit (Form 70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

License number

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone or telegraph and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

82.10(3) Promotions using cigarettes, noncigarettes or coupons. Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale. A sale is defined to "mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever."

Once a sale has occurred, the gift may be any kind whatsoever.

a. *Promotion using cigarettes.* If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped who would then give them to a retailer who gives the cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B, by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE. A manufacturer ships packs of 20, free of charge, to a licensed distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of 421B.4 would not prevent the distribution of cigarettes in this example, since 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes which are sold is controlled by section 421B.2. The cigarettes sold under the “buy one” portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the “get one free” portion of the promotion and which were obtained free of charge will have no invoice cost to the retailer.

b. Promotions using noncigarette items. A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item such as cigarette lighters through wholesale channels to retailers which will be delivered to the customer at the time of the sale of the cigarettes does not violate chapter 421B. (See 1958 O.A.G. #22.)

c. Coupons. A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons which are sent to the final consumer to be redeemed by a retailer who is reimbursed by a manufacturer do not violate chapter 421B. (See 1968 O.A.G. #68.) This would be true even though the coupon represented the full price of the cigarettes.

d. Replacement packages. A manufacturer wants to respond to a customer complaint by replacing a package of 20 cigarettes purchased by the customer with another package of 20 cigarettes. The replacement package must be clearly marked with the following information:

COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID.

The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer’s affidavit required under Iowa Code section 453A.39 (manufacturer’s samples).

This rule is intended to implement Iowa Code sections 453A.1, 453A.13, 453A.16, 453A.22, 453A.31, 453A.39 and chapter 421B.

701—82.11(453A) Refund of tax—unused and destroyed stamps.

82.11(1) *Refunds of unused stamps and destroyed stamps.* Refunds shall be issued for unused stamps which are returned to the department for any reason by a person entitled to receive a refund. This includes unused stamps unaffixed at the close of the business day next preceding the effective date of a decrease in the tax rate which are in excess of the unstamped cigarette inventory on hand as of that date. Banks which are authorized to sell stamps or meter settings are not authorized to issue a refund; the stamps must be returned to and a refund will be issued only by the department. This subrule would also cover stamps which are recalled by the director for purposes of effectuating a change of design of the stamps. A refund will also be issued for stamps which have been lost through destruction, since destroyed stamps have not been used. A refund will not be issued for stamps which are lost (misplaced) or stolen, it being the distributor’s or manufacturer’s responsibility to maintain proper control over cigarette tax stamps. The claim for refund must be supported by proof of the fact of the loss and proof of the quantity of the loss. The claim must be filed within 30 days of the loss.

82.11(2) *Return of used stamps.* Refunds shall be issued for stamps which have been affixed to cigarettes which have become unfit for use or consumption or unsaleable. This refund is available to any licensed distributor or manufacturer upon proof that the cigarettes were returned to the person who manufactured the cigarettes. The proof required shall be an affidavit from the distributor setting forth to whom the cigarettes were returned and verifying that cigarette stamps had been affixed thereto. There must also be included therewith an affidavit from the manufacturer to whom the cigarettes were returned verifying the information.

82.11(3) *Cigarettes which have been destroyed.* The tax shall be returned on cigarettes which have been destroyed after the tax stamps have been affixed, to the person stamping the cigarettes. The person claiming the loss must be able to prove the fact of the loss and quantity of the loss. The claim, accompanied by proof of the loss and proof of the quantity of the loss, must be filed with the department no later than 30 days following the date the loss occurred. The amount of the refund shall be the face value of the stamps less the applicable discount allowed purchasers of tax stamps. This provision does not apply to cigarettes which are lost (misplaced) or stolen.

82.11(4) *Credit in lieu of a refund.* There are no statutory provisions to allow a credit in lieu of a refund of taxes paid for returned or destroyed cigarette stamps.

This rule is intended to implement Iowa Code section 453A.8.

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